PT 03-26
Tax Type: Property Tax
Issue: Charitable Ownership/Use

STATE OF ILLINOIS
DEPARTMENT OF REVENUE
OFFICE OF ADMINISTRATIVE HEARINGS
CHICAGO, ILLINOIS

HOPE NOW, INC. **APPLICANT** **v.** **ILLINOIS DEPARTMENT OF REVENUE**	**No. 01-PT-0090** **(00-16-2569)** **P.I.N: 02-24-309-014**

RECOMMENDATION FOR DISPOSITION

APPEARANCES: Mr. Brett Rappaport of Schwartz, Cooper, Greenberger & Krauss on behalf of Hope Now, Inc. (the "applicant"); Mr. Michael Abramovic, Special Assistant Attorney General, on behalf of the Illinois Department of Revenue (the "Department")

SYNOPSIS: This proceeding raises the following issues: first, whether real estate identified by Cook County Parcel Index Number 02-24-309-014 (the "subject property") was owned by an "institution of public charity," as required by 35 **ILCS** 200/15-65(a) during the period that commenced on January 1, 2000 and ended on July 27, 2000;[1] and second, whether the subject property was leased or otherwise used with a view to profit, in violation of 35 **ILCS** 200/15-65 during the period in dispute. The underlying controversy arises as follows:

The applicant filed a Real Estate Tax Exemption Complaint with the Cook County Board of Review (the "Board") on December 29, 2000. Dept. Ex. No. 1. This

1. This period shall hereinafter be referred to as "the period in dispute."

Complaint, and the accompanying Departmental Application form, named Hope Now, Inc., as the sole applicant in this matter. Dept. Ex. Nos. 1, 4. Neither the Complaint nor the Departmental Application form named Hope Now, Inc.'s lessor, the Alliance for the Mentally Ill, Northwest, Inc., as a co-applicant. *Id*.[2]

The Board reviewed applicant's complaint and recommended to the Department that the subject property be exempt for that 43% of the 2000 assessment year that began on July 28, 2000 and ended on December 31, 2000. Dept. Ex. No. 4. On October 12, 2001, the Department issued its initial determination, which found the subject property to be exempt for that identical 43% of the 2000 assessment year. Dept. Ex. No. 3.

Applicant filed a timely appeal to this determination, which sought an exemption for that 57% of the 2000 assessment year the Department had denied under terms of its initial determination. Dept. Ex. No. 2. Applicant then presented evidence at a formal evidentiary hearing, at which the Department also appeared. Following submission of all evidence and a careful review of the record, I recommend that the Department's initial determination in this matter be affirmed.

<u>FINDINGS OF FACT</u>:

1. The Department's jurisdiction over this matter and its position therein are established by the admission of Dept. Ex. Nos. 1, 3, 4.
2. The Department's position in this matter is that the subject property does not qualify for exemption from real estate taxation under 35 **ILCS** 200/15-65(a) throughout the period in dispute, which runs from January 1, 2000 through July 27, 2000. Dept. Group Ex. No. 3.

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2. Mr. Brett Rappaport of Schwartz, Cooper, Greenberger & Krauss also appeared on behalf of NAMI.

3. The subject property is located in Palatine, Illinois and improved with a one story, 7,250 square foot social service center. Dept. Ex. No. 4.
4. Applicant leased the subject property from its titled owner, the Alliance for the Mentally Ill, Northwest, Inc. ("NAMI") throughout the period in dispute. Applicant Group Ex. No. 1, Documents 3, 8.
5. Applicant is an Illinois not-for-profit corporation organized for purposes of providing social services, such as job training, food and clothing to the homeless or those at risk of becoming homeless. Applicant Group Ex. No. 1, Document 10.
6. NAMI is an Illinois not for profit corporation organized for purposes of: (a) promoting the general welfare and better treatment of the mentally ill; (b) providing support to the families of the mentally ill; (c) advocating for better services for the mentally ill in the fields of housing, jobs, medicine and government; (d) promoting and supporting research that supports the well-being of the mentally ill; (e) increasing public awareness of problems that confront the mentally ill; and, (f) collecting and distributing funds by any lawful means to achieve any or all of the foregoing purposes. Applicant Group Ex. No. 1, Document 6.
7. NAMI'S by-laws further state, *inter alia*, that: (a) membership shall be open to families and friends of the mentally ill as well as consumers of mental health services, "upon payment of annual dues or waiver thereof for good cause[;]" (b) membership dues may be payable on an individual or family basis; and, (c) applicant's governing board of directors shall be responsible for setting the amount of membership dues. *Id*.

8. NAMI's membership fee for 2000 was $35.00.[3] Applicant Group Ex. No. 1, Doc. 1.
9. Applicant did not submit any financial statements establishing NAMI's financial structure for either the period in dispute or the tax year currently in question.[4]
10. Applicant's lease with NAMI provided, *inter alia*, that applicant was to pay as rent interest due on a certain note that was payable to the "Chartered Foundation"[5] and real estate taxes. Applicant Group Ex. No. 1, Doc. 8.
11. Applicant's leasehold with NAMI terminated when NAMI conveyed ownership of the subject property to the applicant on July 28, 2000. Dept. Ex. Nos. 1, 4.

CONCLUSIONS OF LAW:

Article IX, Section 6 of the Illinois Constitution of 1970 provides as follows:

> The General Assembly by law may exempt from taxation only the property of the State, units of local government and school districts and property used exclusively for agricultural and horticultural societies, and for school, religious, cemetery and charitable purposes.

Pursuant to Constitutional authority, the General Assembly enacted Section 15-65(a) of the Property Tax Code, wherein all property owned by "institutions of public charity" is exempted from real estate taxation, provided that such property is "actually and exclusively used for charitable purposes and not leased or otherwise used with a view to profit." 35 **ILCS** 200/15-65(a).

The statutory requirements for this exemption are that: (1) the property be owned by an entity that qualifies as an "institution of public charity;" (2) the property be

3. The record does not specify whether this $35.00 is an individual or family rate.

4. The financial statement submitted as Applicant Group Ex. No. 2, Document 4 was for the period January 1, 1998 through December 31, 1998. *See*, *infra*, at pp. 10-11.

5. Applicant did not submit this note into evidence.

actually and exclusively used for charitable purposes;" *Id*; Methodist Old People's Home v. Korzen, 39 Ill.2d 149, 156, 157 (1968).

Property tax exemptions are inherently injurious to public funds because they impose lost revenue costs on taxing bodies and the overall tax base. In order to minimize the harmful effects of such lost revenue costs, and thereby preserve the Constitutional and statutory limitations that protect the tax base, statutes conferring property tax exemptions are to be strictly construed in favor of taxation. People Ex Rel. Nordland v. the Association of the Winnebego Home for the Aged, 40 Ill.2d 91 (1968); Gas Research Institute v. Department of Revenue, 154 Ill. App.3d 430 (1st Dist. 1987). Therefore, any and all doubts that arise in an exemption proceeding, whether they are attributable to evidentiary deficiencies, debatable factual interpretations or questions of statutory construction, must be resolved in favor of taxation. *Id*.

A. THREASHOLD ISSUES

Before addressing the substantive issues raised herein, it is necessary to decide whether applicant lacks standing to seek an exemption for a period during which it did not actually own the subject property. Standing issues rarely arise in property tax exemption cases because the titled property owner, which is liable for real estate taxes under Section 9-175 of the Property Tax Code,[6] is also the applicant in most cases. Because Section 9-175 imposes this liability, the owner's standing is not questioned, as the owner is presumed to have "a direct and substantial" financial interest in the outcome of the exemption proceeding. Highland Park Women's Club v. Department of Revenue, 206 Ill. App.3d 447 (2nd Dist. 1991).

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6. Section 9-175 of the Property Tax Code states, in pertinent part, that "[t]he owner of property on January 1 in any year shall be liable for the taxes of that year...[.]" 35 **ILCS** 200/9-175.

In this case, however, the entity that owned the subject property throughout the period in dispute, NAMI, is not the applicant. NAMI is an Illinois not-for-profit corporation that is separately incorporated from the entity that is the applicant herein, Hope Now, Inc. As such, NAMI enjoys a legal identity that is separate and distinct from that of the applicant. Consequently, only NAMI can benefit from the statutory grant of standing contained in Section 9-175.

The applicant, Hope Now, Inc., is nevertheless liable for all real estate taxes assessed or levied against the subject property under terms of the lease that vests Hope Now, Inc. with a legitimate leasehold interest in the subject property for the relevant period. Therefore, it certainly has the requisite financial stake in the outcome of this case necessary to provide it with standing herein. However, this grant of standing does not *ipso facto* entitle applicant to an exemption from real estate taxes under 35 **ILCS** 200/15-65 for a period in which it held no ownership interest in the subject property.

If the entity that did own the property during this period, NAMI, believed that it was entitled to an exemption from real estate taxes under 35 **ILCS** 200/15-65 or any other exemption provision contained in the Property Tax Code, its remedy was to file an appropriate exemption complaint. The administrative procedures for filing such complaints are set forth in the Property Tax Code and are as follows: first, "[a]ny person wishing to claim an exemption for the first time … shall file an application with the county board of review or board of appeals, following the procedures of Section 16-70 or 16-130 [of the Code]" (35 **ILCS** 200/15-5); second, the "board of review shall hear and determine the complaint of any person who is assessed on property claimed to be exempt" (35 **ILCS** 200/16-70); third, the clerk of the board of review shall, under the direction of the board, make out and forward to the Department "a full and complete statement of facts in the case" (*id*.); fourth, the Department shall then determine, from the facts presented by the board, whether the property is legally liable to taxation (*id*; 35 **ILCS** 200/16-130); and fifth, the Department shall afford a hearing to any party aggrieved by its determination, provided that such party files a request for hearing within 20 days of the date of the Department's determination (35 **ILCS** 200/8-35).

Here, NAMI did not file an appropriate exemption complaint with the Board. Nor did NAMI seek any determination that its ownership and/or use of the subject property qualified as exempt at any time. Because NAMI did not follow these procedures, it cannot raise any issues related to whether *its own* ownership and use of the subject property qualify for exemption in this proceeding. However, even assuming, *arguendo*, that it could, the following analysis demonstrates that NAMI's lease with the applicant was one that violated the statutory prohibition against leases for profit.

B. LEASE FOR PROFIT

Section 15-65 expressly bars exemption where the property is leased or otherwise "used with a view to profit." 35 **ILCS** 200/15-65. Whether real estate is "leased with a view to profit" depends in the first instance on the intent of the owner in using the property. People ex rel. Goodman v. University of Illinois Foundation, 388 Ill. 363, 371 (1944); Victory Christian Church v. Department of Revenue, 264 Ill. App.3d 919, 922 (1st Dist. 1988). Thus:

> … it is the primary use to which the property is devoted after the leasing which determines whether the tax-exempt status continues. If the primary use is for the production of income, that is, "with a view to profit," the tax exempt status is destroyed. Conversely, if the primary use is not for the production of income but to serve a tax-exempt

> purpose, the tax-exempt status of the property continues even though the use may involve an incidental production of income.

Children's Development Center, Inc. v. Olson, 52 Ill.2d 332, 336 (1972). *See also*, Victory Christian Church, *supra* at 922.

In order to apply this test, "one must look first to see if the owner of the real estate is entitled to exemption from property taxes." Victory Christian Church, *supra* at 922. If the owner is exempt, then "one may proceed to examine the use of the property to see if the tax exempt status continues or is destroyed." *Id*. Because the applicant, Hope Now, Inc., leased the subject property from NAMI throughout the period in dispute, it is necessary to determine whether NAMI qualifies as an "institution of public charity."

By definition, an "institution of public charity" operates to benefit an indefinite number of people in a manner that persuades them to an educational or religious conviction that benefits their general welfare or otherwise reduce the burdens of government. Crerar v. Williams, 145 Ill. 625 (1893). It also: (1) has no capital stock or shareholders; (2) earns no profits or dividends, but rather, derives its funds mainly from public and private charity and holds such funds in trust for the objects and purposes expressed in its charter; (3) dispenses charity to all who need and apply for it; (4) does not provide gain or profit in a private sense to any person connected with it; and, (5) does not appear to place obstacles of any character in the way of those who need and would avail themselves of the charitable benefits it dispenses. Methodist Old People's Home v. Korzen, 39 Ill.2d 149, 156, 157 (1968).

These factors are not to be applied mechanically or technically. DuPage County Board of Review v. Joint Comm'n on Accreditation of Healthcare Organizations, 274 Ill.

App. 3d 461, 466 (2nd Dist. 1995). Rather, they are to be balanced with an overall focus on whether, and to what extent, applicant: (1) primarily serves non-exempt interests, such as those of its own dues-paying members (*see*, Rogers Park Post No. 108 v. Brenza, 8 Ill.2d 286 (1956); Morton Temple Association v. Department of Revenue, 158 Ill. App. 3d 794, 796 (3rd Dist. 1987)) or, (2) operates primarily in the public interest and lessens the State's burden. (*see*, DuPage County Board of Review v. Joint Comm'n on Accreditation of Healthcare Organizations), *supra*; Randolph Street Gallery v. Department of Revenue, 315 Ill. App.3d 1060 (1st Dist. 2000)).

The first step in determining whether NAMI qualifies as an "institution of public charity" is to examine the language of its organizational documents. Morton Temple Association v. Department of Revenue, 158 Ill. App. 3d 794, 796 (3rd Dist. 1987). NAMI's organizational documents provide for a paid membership structure, with NAMI's governing board being responsible for determining the amount of any membership dues that must be paid. Applicant Group Ex. No. 2, Doc. 6.

NAMI's by-laws do contain a provision that authorizes the board to waive membership dues for "good cause." However, neither the by-laws nor any other evidence of record define what constitutes "good cause." Nor does the record indicate what factors the board must take into account when determining whether "good cause" exists. Even if it did, the record also fails to disclose that applicant's board actually reduced or waived its dues for those who were unable to pay during the tax year in question. Absent this information, I am unable to discern whether NAMI operates primarily in the public interest or primarily for the benefit of the dues-paying membership that its by-laws create.

This and all other unsettled issues must be resolved against the applicant, which bears the burden of proving all elements of its exemption claim by clear and convincing evidence. People Ex Rel. Nordland v. Home for the Aged, 40 Ill.2d 91 (1968); Gas Research Institute v. Department of Revenue, 154 Ill. App.3d 430 (1st Dist. 1987). The issue of whether NAMI operates primarily in the public interest is, as demonstrated above, unproven on this record. Even if it were not, however, the financial statement that contained information about NAMI's financial structure (Applicant Group Ex. No. 1, Document 4) was for a tax year other than 2000.

This financial statement is technically irrelevant to this case because each tax year constitutes a separate cause of action for exemption purposes. People *ex rel*. Tomlin v. Illinois State Bar Ass'n, 89 Ill. App.3d 1005, 1013 (4th Dist. 1980); Jackson Park Yacht Club v. Department of Local Government Affairs, 93 Ill. App.3d 542 (1st Dist. 1981); Fairview Haven v. Department of Revenue, 153 Ill. App.3d 763 (4th Dist. 1987). Therefore, a financial statement for a tax year other than the one currently in question is legally insufficient to sustain applicant's burden of proof.

This point has several important ramifications herein. First, Section 15-65 expressly bars exemption where the property is leased or otherwise used with a view to a profit. 35 **ILCS** 200/15-65. In the present context, the word "profit" does not necessarily mean the excess of revenues over expenses. Children's Development Center, Inc. v. Olson, *supra*. However, it is difficult for me to evaluate whether NAMI derived any type of profit from the lease on the evidence contained in this particular record, which lacks appropriate documentation proving: (a) the amount of gross rentals, in actual dollars, NAMI received from applicant; (b) what expenses NAMI incurred in renting the subject property to applicant; and, (c) what use NAMI made of the rental income it received from applicant.

Applicant's lease with NAMI, (Applicant Group Ex. No. 1, Document 8), does provide, *inter alia*, that applicant was to pay NAMI rentals consisting of "interest due on [a] Chartered Foundation Note" and real estate taxes. Without more, this mere statement does not prove the actual dollar amount of rentals that applicant paid to NAMI. More importantly, because applicant did not submit the actual "Chartered Foundation Note," I have no way of discerning the terms and conditions of that note or the amount of interest applicant was required to pay thereunder.

These failures of proof, coupled with the fact that the lease was executed on a prepared commercial "Store Lease" form, raise the inference this lease was one for profit because it was a manifestation of what, in the absence of appropriate documentary evidence to the contrary, must be viewed as an arm's length business transaction between applicant and NAMI. Because this inference and its resulting conclusion support taxation, they must be applied over other possible inferences and conclusions that do not. People Ex Rel. Nordland v. Home for the Aged, 40 Ill.2d 91 (1968); Gas Research Institute v. Department of Revenue, 154 Ill. App.3d 430 (1st Dist. 1987). Therefore, the subject property does not qualify for exemption from real estate taxation for the period in dispute because it was leased with a view to profit in violation of 35 **ILCS** 200/15-65 throughout that time.

Despite the above, our courts have recognized that, in some circumstances, exemptions should not be destroyed if practical business realities prevent an otherwise exempt organization from obtaining title in its own name. Christian Action Ministry v.

Department of Local Government Affairs, 74 Ill.2d 51 (1978).[7] There, the Ministry obtained its interest in the property by means of a contract for warranty deed. The terms of this contract provided, *inter alia*, that: (1) the Ministry was to make a $30,000.00 down payment and monthly payments of $2,500.00 toward the purchase price;[8] (2) the Ministry was to be liable for payment of any and all real estate taxes levied against the property at issue; and, (3) no title, legal or equitable, was to pass to the Ministry until the deed was delivered or until the purchase price was paid in full. Christian Action Ministry, *supra* at 54.

The court placed little if any significance on the last condition and specifically noted that:

> Regardless of the status of title, [the Ministry] has a substantial monetary interest in the property and is liable for payment of real estate taxes. We cannot perceive any difference in kind between the conventional purchase money mortgage arrangement, which the Department concedes would qualify [the Ministry] for tax exempt status, and the contract for warranty deed which would justify disparate treatment for tax purposes. [Citations omitted].
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> Had the Ministry arranged a mortgage loan for the property, it would have qualified for tax-exempt status. To penalize [an otherwise exempt entity] for failing to acquire the customary forms of financing, and hence, for making the alternative arrangement of a contract for sale of property in order to carry [out its otherwise exempt activities] runs counter to the stated policy objective and policy consideration of encouraging [such activities].

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7. *See also*, Cole Hospital v. Champaign County Board of Review, 113 Ill. App. 3d 96 (4th Dist. 1983) (due to troubled financial history and unavailability of State revenue bonds, appellee employed conveyance and lease-back arrangement to obtain equitable title to property used for charitable purposes).

8. The actual purchase price was unspecified in the court's opinion. Christian Action Ministries, *supra*, at 54.

Christian Action Ministries, *supra* at 61-62.

This case is very different from Christian Action Ministries in that applicant failed to sustain its burden of proof on several key points. First, although applicant's executive director, Beth Nabors, testified that it would not have been possible for the applicant to purchase the subject property unless it received a grant from the United States Department of Housing and Urban Development ("HUD") (Tr. pp. 19-20), applicant did not submit the grant application or any other documentary evidence establishing the terms and conditions of this grant. Nor did applicant submit any other documentation that would support Ms. Nabors testimony that NAMI assumed ownership of the subject property in order to enable applicant to obtain this grant. (*Id.*).

Neither the trustee's deed pursuant to which NAMI obtained its ownership interest in the subject property nor the warranty deed in trust by which NAMI conveyed its ownership interest therein to applicant, contain any mention of the HUD grant. Nor do either of these documents contain any indication that NAMI acted in any type of fiduciary capacity for the applicant. Due to these evidentiary deficiencies, Ms. Nabors testimony, standing alone, does not rise to the level of clear and convincing evidence necessary to sustain applicant's burden of proof.

These evidentiary deficiencies are especially significant in a case, such as this one, where the applicant is alleging, in substance, that NAMI's ownership interest in the subject property was subject to a constructive trust in favor of applicant throughout the period in dispute. Some form of wrongdoing, such as a breach of fiduciary duty, is needed to impose a constructive trust. Salt Creek Rural Park District v. Department of Revenue, 334 Ill. App.3d 67, 72 (1st Dist. 2002). *See also*, Mile-O-Mo Fishing Club, Inc.

v. Noble, 62 Ill. App.2d 50, 56-57 (5^{th} Dist, 1965). If, however, the record does not support the existence of a fiduciary relationship between applicant and NAMI, then the record also does not support the imposition of a constructive trust in favor of the purported beneficiary, applicant.

The record also does not support the somewhat related conclusion, reached in People ex rel. Goodman v. University of Illinois Foundation, 388 Ill. 363 (1944) ("Goodman"); Southern Illinois University Foundation v. Booker, 98 Ill. App.3d 1062 (5th District, 1981) ("Booker"), that applicant itself should qualify as an exempt owner because its operations were directed and controlled by another tax exempt entity throughout the period in dispute.

The basic operational facts of Goodman and Booker are substantially identical: two tax-exempt public universities (the University of Illinois in Goodman; Southern Illinois University in Booker) were subject to statutory debt limitations that made it legally impossible for them to incur whatever long-term financing was necessary to purchase the properties in question. Goodman, *supra* at 366, 368; Booker, *supra* at 1067. These prohibitions did not apply to the respective Foundations, which obtained appropriate financing for the acquisition of, and held legal title to, each of the properties. Goodman, *supra* at 366, 368; Booker *supra* at 1063, 1066.

The organizational documents of the Foundation in Goodman recited, in pertinent part, that it was authorized to "act without profit as trustee of educational or charitable trusts" for the benefit of the University of Illinois. Goodman, *supra* at 366. Those of the Foundation in Booker expressly stated, *inter alia*, that it was: (a) "to buy, sell, lease, own, manage, convey and mortgage real estate;" (b) to act, "*in a manner specified by the*

Board of Trustees of Southern Illinois University" as the business agent of that Board in respect to the acquisition, management and leasing real property and buildings; and, (c) to "do such other acts and undertake such other enterprises as in the judgment of the [Foundation's] Board of Directors shall tend to promote the interests and welfare of Southern Illinois University." (emphasis added) Booker, *supra* at 1064.

The SIU Foundation's by-laws further stated, in substance, that the president of Southern Illinois University, or his personal designee, was to sit on the Foundation's governing board, as were a number of other directors personally appointed by the Chairman of the University's Board of Trustees and other high-ranking University officials. *Id*. at 1064-1065.

Based on these provisions, the Goodman and Booker courts concluded that the respective universities exercised sufficient direction and control over the Foundations so as to place equitable ownership of the properties in question in the universities. Goodman, *supra* at 366, 372, 375; Booker, *supra* at 1071. The same, however, may not be said in this case for several reasons.

First, as noted above, the quantum of proof applicant submitted concerning NAMI's organizational and financial structures does not rise to the level of clear and convincing evidence necessary to prove that NAMI qualifies as an "institution of public charity" or other tax exempt entity. Even if this were not the case, both applicant and NAMI are separately incorporated as Illinois not-for-profit corporations. Therefore, as an initial matter, each of these not-for-profit corporations enjoys a legal identity that is separate and distinct from that of the other.

Furthermore, the organizational documents of the purported nominal title holder in this case, NAMI, do not contain any language expressly stating that NAMI is to carry out its business under the direction, control or supervision of the applicant. Booker, *supra* at 1064. Absent affirmative evidence that applicant, in fact, exercises such direction and control, I am required to resolve all unproven matters in favor of taxation. People Ex Rel. Nordland v. Home for the Aged, 40 Ill.2d 91 (1968); Gas Research Institute v. Department of Revenue, 154 Ill. App.3d 430 (1st Dist. 1987). Therefore, the evidence presented herein fails to establish that the relationship between applicant and NAMI is anything other than that of two parties engaged in an arm's length business transaction.

In addition, the record in Booker contained a stipulation indicating that upon retirement of the mortgage, the Foundation would reconvey the properties in question to the University. Booker *supra*, at 1067. Neither applicant's lease with NAMI nor any other evidence of record contains any provision that requires that NAMI convey the subject property to applicant at any specific point in time or upon the occurrence of any specified event, such as the applicant's obtaining appropriate financing from HUD. Without documentation establishing that NAMI was required to convey the subject property to applicant upon the occurrence of such a condition precedent, I am, once again, required to settle all evidentiary deficiencies against the applicant and in favor of taxation. People Ex Rel. Nordland v. Home for the Aged, 40 Ill.2d 91 (1968); Gas Research Institute v. Department of Revenue, 154 Ill. App.3d 430 (1st Dist. 1987). Therefore, I must conclude that the conveyance whereby NAMI transferred ownership of the subject property to applicant on July 28, 2000 was merely the event that terminated the business relationship between applicant and NAMI relative to the type of leasing arrangement that disqualified the subject property from exemption under 35 **ILCS** 200/15-65.

Based on the above, I conclude that the subject property fails to qualify for exemption from real estate taxes for the period in dispute because applicant failed to prove by clear and convincing evidence that: (1) its lessee throughout that period, NAMI, qualified as an "institution of public charity" or other tax exempt entity, as required by Victory Christian Church v. Department of Revenue, 264 Ill. App.3d 919, 922 (1st Dist. 1988);[9] or, (2) that NAMI's interest in the subject property was, as discussed in Salt Creek Rural Park District v. Department of Revenue, 334 Ill. App.3d 67, 72 (1st Dist. 2002) and Mile-O-Mo Fishing Club, Inc. v. Noble, 62 Ill. App.2d 50, 56-57 (5th Dist, 1965), subject to a constructive trust in favor of applicant during that period; or, that (3) applicant effectively exercised direction and control over the operations of the purported nominal title holder, NAMI, throughout the period in dispute. People ex rel. Goodman v. University of Illinois Foundation, 388 Ill. 363 (1944); Southern Illinois University

9. It is briefly noted that the holding in Victory Christian Church expressly states that use issues need not be considered if the lessor does not qualify for exempt status. Victory Christian Church, *supra* at 922. See also, *supra*, at p. 8. For this reason, I have not addressed any use issues in these conclusions.

I briefly note that the evidence relative to use is, once again, legally insufficient to sustain applicant's burden. For instance, the affidavit of NAMI's president, Star Roberts, indicated that it used the property "*only* in furtherance of its not for profit activities" during the period under review. Applicant Group Ex. No. 2, Document 2. This statement, in and of itself, is unacceptably conclusory in that it does not contain any details as exactly what "not for profit" activities NAMI held on the subject property during that period. Furthermore, because applicant failed to prove that NAMI qualifies as an "institution of public charity," any uses that NAMI itself made of the subject property during the period under review likewise fail to qualify as being "exclusively charitable" within the meaning of 35 **ILCS** 200/15-65.

Moreover, although applicant's executive director, Beth Nabors, testified that applicant used some areas of the subject property for storage during the period under review (Tr. pp. 115-116), this use was part and parcel of the very same business transaction whereby applicant leased the subject property from NAMI. Consequently, any uses applicant made of the subject property throughout this period were, by definition, uses associated with a lease "for profit" in violation of Section 15-65. Therefore, the subject property was not in exempt use during this period.

Foundation v. Booker, 98 Ill. App.3d 1062 (5th District, 1981). Therefore, the Department's initial determination in this matter should be affirmed.

WHEREFORE, for all the aforementioned reasons, it is my recommendation that with respect to Cook County Parcel Index Number 02-24-309-014:

A. The subject property not be exempt from real estate taxation for that 57% of the 2000 assessment year which began January 1, 2000 and ended July 27, 2000;

B. The subject property be so exempt for that 43% of the 2000 assessment year which began July 28, 2000 and ended December 31, 2000.

Date: 10/14/2003

Alan I. Marcus
Administrative Law Judge